

# ISSUES ASSOCIATED WITH THE TIERED REGULATORY STRUCTURE

## SUMMARY REPORT

At its March 1998 meeting, in response to issues raised by local enforcement agencies and the regulated community with the Integrated Waste Management Board's regulatory tier structure and processes, the IWMB's Permitting and Enforcement Committee directed staff to collect feedback from interested parties on the issues. IWMB staff conducted workshops in Sacramento on May 4, 1998 and in Burbank on May 8, 1998. To spark discussion at the workshops, IWMB staff supplied a listing of six issues reported to them during a preliminary, informal survey. This report summarizes the workshop discussion of the six issues and possible ways the IWMB could respond to the issues. The report also summarizes written comments received from individuals who did not attend the workshops.

### ISSUE 1

**Inflexibility: The inability to add site-specific conditions (entitlements or restrictions) to any tier lower than a full permit creates an inflexible permit.**

#### DISCUSSION ITEMS

- Making changes to an existing tiered permit is cumbersome. You have to apply for a new permit. The old process was more flexible. Waste diversion facilities (e.g. composting facilities) require flexibility to allow them to be responsive to changing market conditions.
- Bay Area local enforcement agencies (LEAs) feel strongly that the IWMB should not rely on local permitting processes to protect public health, safety, and the environment. That is the State's role.
- The tier system's shift to local permitting was not communicated well to local planning and land-use authorities, therefore, they are not effectively handling the issues. The shift will also result in a hodge-podge of local ordinances and land-use conditions.
- CUPs are not issued for all activities. Local agencies are sometimes unwilling to place and/or enforce site specific conditions.
- Minimum (operating) standards are designed to regulate the activities at operations/facilities.
- The public may not always be satisfied that the standard conditions of a tiered permit are providing adequate protection. It may be beneficial to an operator, from a public perception standpoint, to have a specific condition(s) that provides some sureties.
- One of the problems is we are still trying to figure out what a permit is. It's not just a question of flexibility within the tiers, it's the whole permit structure.
- Up-tiering should be allowed.
- The slotting facilities/operations into tiers has been retrospective. The way we measure what tier we put something in is a bit awkward.
- The inability to apply specific conditions is a limitation of the tiered system but there is also a limitation on the Full permit. The statutory authority of the IWMB limits the conditions of a Full permit.

#### POSSIBLE RESPONSE(S)

- 1.a. Up-Tiering – Could potentially cover a majority of the downfalls associated with the inability to place site-specific conditions. General agreement that up-tiering is beneficial when both parties (regulator and regulatee) agree to up-tier. Still some uncertainty when parties disagree.
- 1.b. Flexibility for Change to Permit– The process to make changes to a permit should be made easier, providing incentive to the operator to make the change, resulting in a properly

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- described/permitted facility. The process should allow for revisions, as opposed to a new permit.
- 1.c. Change in Operation – The IWMB should define ‘change in operation’ more precisely so that it is clear what type of changes can be made with a Report of Facility Information amendment.
  - 1.d. Conditions – LEAs suggested the IWMB allow tiers to be conditionable. The regulated community stated that conditioning tiered permits would reintroduce discretionary actions, which is not consistent with tiers lower than Standardized. It may be possible to allow one or more specific conditions to be added to a Standardized permit where there is operator and LEA agreement.
  - 1.e. Eliminate Tiered System

### **ISSUE 2**

**Not less burdensome – No regulatory relief: Addressing the site-specific needs through local means combined with the process to obtain a tiered permit can be as or more burdensome than obtaining a full solid waste permit. In such cases, the tiered structure is not providing the regulatory relief it was intended to provide.**

#### **DISCUSSION ITEMS**

- The lower levels are definitely less burdensome but there is an issue with the Standardized tier.
- Some LEAs are spending a great deal of time and effort on excluded activities. The State provides no fee collection authority, therefore, no money is available to fund the oversight activities. Not much can be done to respond by altering tier structure. The point is IWMB should be careful about what activities it places in this tier.
- The issues with the tiered structure are most prominent in the Standardized tier. Could be due to size of facilities and/or benign nature of smaller facilities/operations. Some discussion of elimination coupled with the suggestion to contact all the Standardized facilities for first-hand information.
- The process seems to work smoothly when everyone (LEA, local planning, operator) works cooperatively from the project inception.

#### **POSSIBLE RESPONSE(S)**

- 2.a. Up-Tiering (see above)

### **ISSUE 3**

**Insufficient regulatory oversight: The inability to add site-specific conditions (entitlements or restrictions) to any tier lower than a full permit limits a Local Enforcement Agency’s ability protect public health, safety, and the environment.**

#### **DISCUSSION ITEMS**

- LEAs are generally compliance-oriented rather than enforcement-oriented.
- The major benefit of the Standardized tier to the operator is shortened process timelines.

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### **POSSIBLE RESPONSE(S)**

- 3.a. Clearer Lines w/i Tiers – Better definitions of facilities/operations would provide clearer lines between tiers and clear-up many of the issues.
- 3.b. Clarity re: Authority for Activities – Similar to issues with the excluded tier, clarity is needed with respect to characterizing activities outside the IWMB's authority.
- 3.c. Add Process - Rather than decide in a rulemaking what types of operations should be excluded, use a process, similar to the 27 CCR 21565 process, where the potential for no adverse impact must be demonstrated.
- 3.d. Tiered Operations vs. Tiered Permits - Facilities/operations slotted into appropriate tiers based on information submitted in an operations plan.

### **ISSUE 4**

**Fixed set of standard permit conditions not appropriate for complex operations/facilities: Standard permit conditions may not be properly suited for the complex and changeable nature of certain activities such as composting operations/facilities. They may be better suited for single waste type operations/facilities (e.g., contaminated soil, ash) where the operational practices are more consistent.**

### **DISCUSSION**

- The capability to up-tier, currently, is limited. A procedure was not included in the regulations because there was no agreement over who should decide when up-tiering is allowable. Currently, to up-tier an operator must describe her operation in such a way that it would qualify for a higher tier although it may not be operating at that level. This may be troublesome in some cases where the higher level activity is controversial.

### **POSSIBLE RESPONSE(S)**

- 4.a. Up-Tiering (see above)
- 4.b. Shift Conditions - Eliminate Standardized tier and shift standard conditions to the Registration tier. Registration tier remains ministerial but would then have a set of fixed standards.
- 4.c. Survey – Questionnaire to LEAs who oversee and operators of Standardized permitted facilities asking for: 1) real examples of operational issues, particularly those related to siting, not covered by the standard conditions of the permit or minimum standards, and 2) opinions on the proper slotting of these facilities in the Standardized tier.
- 4.d. Add Standards - Add proximity sensitive standards to address siting issues.

### **ISSUE 5**

**Process time constraints (Standardized Tier): The thirty-day IWMB processing period is often shortened by deadlines for noticing committee and IWMB meeting agendas. In many cases, Standardized permits are pulled off committee and IWMB agendas until such time as the LEA, IWMB staff, and the applicant can rectify outstanding issues.**

### **DISCUSSION ITEMS**

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- One commentor suggested the fact that the IWMB has not delegated authority to issue Standardized permits indicates the IWMB Members have concerns about the facilities in the tier and, therefore, want to maintain direct decision making control. The fact that they are concerned suggests that changes should be made to the tier.
- Process time constraints were not a major issue for the workshop participants but it continues to be an issue for IWMB staff.

### **POSSIBLE RESPONSE(S)**

- 5.a. Extend Process Time - Extend the process time from the 30 days to 60 days.
- 5.b. Delegate Authority
- 5.c. Completeness Review - Establish an up-front completeness review period.

## **ISSUE 6**

**No operations plan (Notification and Registration tiers): With the exception of the proposed Transfer/Processing regulations, which have a requirement to submit an operations plan for facilities in the registration tier, the tier regulations requires only the full and standardized tiers to submit descriptions of operations.**

### **DISCUSSION ITEMS**

- Submittal of an operations plan would establish a dialogue between the operator and the LEA, which helps all parties to have a mutual understanding of the planned activities.
- Establishing a review and approval process would re-introduce a discretionary action by the LEA, which against the intent of the tiered system.

### **POSSIBLE RESPONSE(S)**

- 6.a. Operations Plan – LEAs recommended that operations plans be required for all tiers. The amount of detail required could vary based on the tier. The purpose of the operations plan is to provide LEAs with enough information to make an informed decision about the correct placement of the facility/operation.